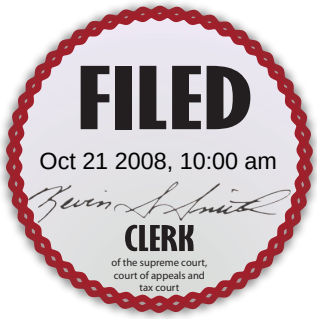

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IN THE
COURT OF APPEALS OF INDIANA

JOSEPH L. BETSCH,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 42A01-0804-CV-160
	)	
JENNIFER J. BETSCH,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE KNOX SUPERIOR COURT
The Honorable W. Timothy Crowley, Judge
Cause No. 42D01-0211-DR-148

October 21, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Joseph L. Betsch ("Father") appeals a support modification order entered in favor of Jennifer J. Betsch ("Mother"). We affirm in part, reverse in part, and remand.

Issues

We reorder and restate the issues as follows:

I. Did the trial court err in calculating the amount imputed to Father's income for use of his company vehicle?

II. Did the trial court err in calculating Father's parenting time credit?

III. Did the trial court err in calculating Mother's work-related childcare expenses?

Facts and Procedural History

On November 13, 2002, Mother filed a petition for dissolution of her marriage to Father. The trial court held a hearing on October 21, 2003, and entered a decree of dissolution on that date. At that time, the couple had one daughter, Josie, born January 30, 2002. On July 3, 2007, Father filed a petition for modification of support. On August 30, 2007, Mother filed a petition for modification of custody and visitation, a motion for contempt citation, and a notice of intent to relocate. The trial court consolidated all matters, including a determination of paternity of Jenna, born March 23, 2006, and held a hearing on November 1, 2007. On February 1, 2008, the trial court entered a judgment naming Father as Jenna's father and issued an order concerning all other matters in dispute. Father appeals the trial court's calculation of his child support obligation.

Discussion and Decision

Trial courts enjoy broad discretion in ruling on child support. *Hartley v. Hartley*, 862 N.E.2d 274, 286 (Ind. Ct. App. 2007). We will reverse the trial court's decision only where it is clearly erroneous. *Dillon v. Dillon*, 696 N.E.2d 85, 87 (Ind. Ct. App. 1998). A trial court's decision is clearly erroneous when it is against the logic and effect of the facts and circumstances before it. *Id*.

We note that Mother has failed to file an appellee's brief. When the appellee fails to file a brief, we apply a less stringent standard of review. *Van Wieren v. Van Wieren*, 858 N.E.2d 216, 221 (Ind. Ct. App. 2006). In such cases, the judgment may be reversed if the appellant's brief presents a prima facie case of error. *Id*. "Prima facie error is error at first sight, on first appearance, or on the face of it." *Id*.

I. Company Vehicle

Father contends that the trial court erred in imputing $74.00 to his weekly gross income for use of his company vehicle. IRS Publication 15-B provides as follows:

> In general, the [fair market value] of an employer-provided vehicle is the amount the employee would have to pay a third party to lease the same or similar vehicle on the same or comparable terms in the geographic area where the employee uses the vehicle. A comparable lease term would be the amount of time the vehicle is available for the employee's use, such as a 1-year period.

Pet. Ex. 2.

Here, the undisputed fair market value of Father's company vehicle was $9,350.00. Appellant's App. at 24. According to Table 3-1 of IRS Publication 15-B, the annual lease value of a vehicle whose fair market value is between $9,000.00 and $9,999.00 is $2,850.00. Pet. Ex. 2. When divided by fifty-two weeks per year, $54.81 is imputed to Father's weekly

income. In addition, Father's employer paid for his fuel. Pursuant to IRS Publication 15-B, an employer can value the fuel at fair market value or at 5.5 cents per mile for all miles the employee drives. *Id*. The record indicates that Father drove approximately 28,500 miles per year. Thus, an additional $30.14 could be imputed to Father's weekly income, for a total of $74.95. To the extent Father argues that the amount imputed to his income should be decreased by the number of days per month attributable to his strictly business use of the vehicle, he cites no authority IRS Publication 15-B or otherwise that would justify such a decrease. As such, he has failed to establish, prima facie, that the trial court abused its discretion in imputing $74.00 dollars per week to his income in representation of his use of the company vehicle.

II. Parenting Time Credit

Next, Father contends that the trial court erred in calculating his parenting time credit at fifty-two overnights. "According to the Indiana Child Support Guidelines, parenting time credit begins at fifty-two overnights annually. Ind. Child Support Guideline 6. In other words, if a parent has fifty-one or fewer overnights annually, then that parent is not entitled to a parenting time credit." *Hartley*, 862 N.E.2d at 286.

Here, Father kept Josie from Friday to Sunday every other weekend. *See* Ind. Parenting Time Guideline II(B)(1) (regular parenting time for child age three or over includes alternating weekends from Friday evening to Sunday evening). Due to Jenna's young age, he kept her overnight for one night every other weekend. *See* Ind. Parenting Time Guideline II(A)(1) (overnight parenting time for infant not to exceed one twenty-four-hour period per week). The trial court gave Father a parenting time credit for fifty-two overnights and noted

that Father "would be entitled to a significant decrease in his child support if he exercised the additional visitation opportunities offered to him pursuant to the Indiana parenting time Guidelines." Appellant's App. at 6.

Essentially, Father contends that the trial court should have added Jenna's twenty-six overnights per year to Josie's fifty-two overnights per year, for a total of seventy-eight overnight credits.[1] "The Child Support Guidelines offer no direction for calculating parenting time credit when a parent spends overnights with fewer than all of his children." *Hartley*, 862 N.E.2d at 286. In *Hartley*, a father of three children spent sixty-eight overnights with one of his children and no overnights with the others. We held that the trial court acted within its discretion in concluding that as a father of three children, Hartley would have needed three times the minimum of fifty-two nights in order to be eligible for parenting time credit.

In this case, Father is entitled to only one night of parenting time for each night he kept Josie and Jenna together, not two as he suggests. To adopt a rule in which each child's overnights are added to his or her siblings' to determine total parenting time credit would lead to an absurd result in which a noncustodial parent of seven or more children would receive credit for an entire year or more of parenting time, when in fact he or she has kept the children as a group for only the fifty-two-night minimum. Father has failed to establish, prima facie, that the trial court abused its discretion in awarding him a parenting time credit of fifty-two overnights.

III. Work-related Childcare Expenses

Finally, Father asserts that the trial court erred in calculating Mother's weekly work-related childcare expenses at $175.00.

> Child care costs incurred due to employment or job search of both parent(s) should be added to the basic [child support] obligation. It includes the separate cost of a sitter, day care, or like care of a child or children while the parent works or actively seeks employment. Such child care costs must be reasonable and should not exceed the level required to provide quality care for the children.

Ind. Child Support Guideline 3(E)(1). Childcare expenses are limited to those established by the evidence in the record. *See Bass v. Bass*, 779 N.E.2d 582, 594 (Ind. Ct. App. 2002), *trans. denied* (2003) (trial court erred in assessing weekly childcare expenses according to Mother's calculation of $98.00, where evidence established a weekly average of $60.00).

Father argues that the trial court's assessment of Mother's childcare expenses at $175.00 per week was speculative and unsupported by the facts established in the record. In its order, the trial court found "that there were significant differences of opinion concerning … the Petitioner/Mother's daycare expenses, with each party providing the Court with significantly different calculations concerning these amounts." Appellant's App. at 5. Mother's worksheet listed her weekly childcare expenses at $224.94.[2] Pet. Ex. 4. Father's worksheet listed Mother's weekly childcare expenses at $125.00. Appellant's App. at 17. At the hearing, Mother testified that she currently was paying $125.00 per week for Jenna's daycare expenses. Tr. at 98. She further testified that her parents were watching Josie at no charge before and after she attended all-day kindergarten. *Id*. at 91. Mother's Exhibit 3

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[1] Father miscalculates the sum as seventy-two, when in fact it would be seventy-eight.

[2] In her summary of the November 1, 2007 hearing, Mother indicated an error in her initial calculation, arguing that it should be adjusted to $216.86 per week. Appellant's App. at 26-27.

indicates an additional cost of $127.48 per week incurred for Josie during the three summer months and three vacation weeks during the school year.[3] Tr. at 110. The average weekly increase spread over fifty-two weeks per year is $38.98. When added to the $125.00 weekly costs incurred for Jenna, this totals $161.98 per week. Appellant's App. at 26.

We now address the issue of whether the weekly childcare amount should have included a possible change in Josie's before- and after-school arrangements. Although Mother indicated a desire to place Josie with a babysitter at $75.00 per week, she also testified that the babysitter currently had no openings. *Id*. at 92. On direct examination, Mother testified as follows:

> Q: So that's $75.00 a week?
>
> A: Right, and that was for just to [sic] watch Josie before school and pick her up from school.
>
> Q: And you said she's full?
>
> A: Yes.
>
> Q: How much … did you include $75.00 in your figure on your Child Support Worksheet for the transportation to and from school for Josie that you're anticipating incurring?
>
> A: Yes, I did.
>
> Q: And because that lady is full, do you anticipate that amount, actually, being higher?
>
> A: It could be. I don't honestly know, because this was a friend and it was cheap.

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[3] Mother's employee pay stub indicates a two-week childcare charge of $499.08 total for Jenna and Josie for the period beginning on July 30, 2007, and ending on August 12, 2007. Pet. Ex. 3.

Id.

As best we can discern, the trial court attempted to anticipate Mother's future obligations, should the grandparents cease to serve as Josie's caregivers. However, the only current childcare obligation substantiated by the evidence in the record was $161.98 per week; therefore, the trial court erred when it entered $175.00 as the cost incurred for weekly childcare expenses. We reverse and remand with instructions to enter a work-related weekly childcare figure of $162.00. *See* Ind. Child Support Guideline 3(D), cmt. 2 (child support rounded to nearest dollar).

Affirmed in part, reversed in part, and remanded.

KIRSCH, J., and VAIDIK, J., concur.